FILED
JUL 21 1977
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

No. 77-117

NATIONAL BROILER MARKETING ASSOCIATION,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals
for the Fifth Circuit

MICHAEL A. DOYLE
FREDERICK H. VON UNWERTH
PETER KONTIO
ALSTON, MILLER & GAINES
1200 C&S National Bank Building
35 Broad Street
Atlanta, Georgia 30303

RICHARD A. POSNER
1222 East Fifty-Sixth Street
Chicago, Illinois 60637
Counsel for Petitioner

St. Louis Law Printing Co., Inc., 812 Olive Street 63101 314-231-4477

INDEX

	Page
Opinions Below	1
Jurisdiction	2
Question Presented	2
Statutes Involved	2
Statement	3
Introduction	3
Facts	4
Reasons for Granting the Writ	9
Conclusion	19
Appendix A, Opinion of Court of Appeals	A-1
Appendix B, Opinion of District Court Granting Motion for Partial Summary Judgment	A-23
Appendix C, Order of District Court Granting Summary Judgment and Dismissing Complaint	A-33
Appendix D, Judgment of Court of Appeals	A-37
Appendix E, "Integrated Cattle Marketing—A Better Way," by Clement E. Ward	A-38

Citations

Cases

Bayside Enterprise, Inc. v. National Labor Relations Board, — U.S. —, 97 S.Ct. 576 (1977) 10, 17, 18

Case-Swayne Co., Inc. v. Sunkist Growers, Inc., 369 F.2d 449 (9th Cir. 1966), rev'd on other grounds, 389 U.S. 384 (1967) 14, 18

Sunkist Growers, Inc. v. Winckler & Smith Citrus Products Co., 370 U.S. 19 (1962) 5, 18

Garth, 56 T.C. 610 (1971) 12

Maple Leaf Farms, Inc., 64 T.C. 438 (1975) 12

Tigner v. Texas, 310 U.S. 141, 145-147 (1940) 9

United States v. Chemell, 243 F.2d 944 (5th Cir. 1957) .. 11

United States v. Whitridge, 197 U.S. 135, 143 (1905) ... 15

Statutes

7 U.S.C. § 291-292 ..... 3, 5, 9

12 U.S.C. § 2129 18

15 U.S.C. § 1 2

28 U.S.C. § 1254(1) 2

Legislative Materials

H.R. Rep. No. 24 67 Cong. 1st Sess. 1 (1921) 14

62 Cong. Rec. 2052 (1922) 14

62 Cong. Rec. 2173 (1922) 14

62 Cong. Rec. 2052, 2172 (1922) 14

62 Cong. Rec. 2217 (1922) 16

62 Cong. Rec. 2218 (1922) 16

62 Cong. Rec. 2263 (1922) 16

62 Cong. Rec. 2227, 2273 (1962) 16

Miscellaneous

Casper & Posner, The Workload of the Supreme Court (1976) 13

Knapp, The Rise of American Cooperative Enterprise 1620-1920 (1969) 6

Roy, Contract Farming and Economic Integration (2d ed. 1972) 12

Tobin & Arthur, Dynamics of Adjustment in the Broiler Industry (1964) 7

U.S. Dep't of Agriculture, Agricultural Statistics, 1941 .. 6

Ward, Integrated Cattle Marketing—A Better Way, U.S. Dep't of Agr., Farmer Cooperative Serv., FCS Info. 107, May 1977 ..... 12, 17

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

No. .....

NATIONAL BROILER MARKETING ASSOCIATION,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI
To the United States Court of Appeals for the Fifth Circuit

OPINIONS BELOW

The opinion of the court of appeals (App. A., *infra* at A-1) is reported at 550 F.2d 1380. The opinion of the district court granting petitioner's motion for partial summary judgment (App. B., *infra* at A-23) is not officially reported, but appears at 1975-2 CCH Trade Cas. ¶60,509. The order of the district court granting summary judgment and dismissing the complaint (App. C., *infra* at A-33) is not reported.

JURISDICTION

The judgment of the court of appeals (App. D., *infra* at A-37) was entered on April 22, 1977. The jurisdiction of this Court is founded on 28 U.S.C. §1254(1).

QUESTION PRESENTED

The Capper-Volstead Act provides that "persons engaged in the production of agricultural products as farmers, planters, ranchmen, dairymen, nut or fruit growers" may form cooperative associations which are exempt from Section 1 of the Sherman Act. Petitioner is a cooperative association whose members include integrated producers of broiler chickens, concededly an "agricultural product" within the meaning of the Capper-Volstead Act.

The question presented is whether integrated producers of broiler chickens are not "farmers" within the meaning of the Capper-Volstead Act because, although they own the flocks, make all production and marketing decisions, incur more than 90 percent of the cost of producing the broiler chicken, and assume the primary risk of market price fluctuations, they employ independent contractors ("growers") to tend the chicken during its "grow-out" phase from chick to mature chicken.

STATUTES INVOLVED

Section 1 of the Sherman Act, as amended, 15 U.S.C. §1, provides in pertinent part that "[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. . . ."

The Capper-Volstead Act, 7 U.S.C. §§ 291-292, is set forth in full in the court of appeals' opinion in this case, App. A, *infra*, at A-5, n. 5. Section 291 provides in part:

> "Persons engaged in the production of agricultural products as farmers, planters, ranchmen, dairymen, nut or fruit growers may act together in associations, corporate or otherwise, with or without capital stock, in collectively processing, preparing for market, handling, and marketing in interstate and foreign commerce, such products of persons so engaged. Such association may have marketing agencies in common, and such associations and their members may make the necessary contracts and agreements to effect such purposes. . . ."

STATEMENT

Introduction

The Department of Justice filed this civil antitrust suit against petitioner, the only national cooperative agricultural marketing association of producers of broiler chickens, charging the association and its members with price fixing in violation of Section 1 of the Sherman Act. Petitioner moved for summary judgment on the ground that the Capper-Volstead Act exempts the challenged activities from Section 1 of the Sherman Act. The district court granted the motion and ordered the complaint dismissed. The Court of Appeals for the Fifth Circuit reversed, holding that petitioner was excluded from the protection of the Capper-Volstead Act because the integrated producers who comprise it are not "farmers" within the meaning of the Act. The sole issue in this case is whether the court of appeals was correct in construing the Capper-Volstead Act to exclude integrated broiler producers.

Facts

The facts are stipulated (R. 574).[1] Broilers—conceded to be an "agricultural product" within the meaning of the Capper-Volstead Act (R. 526)—are young chickens, slaughtered at seven to nine weeks of age, processed, and offered for sale ready to cook. Their production involves the following steps: (1) raising, breeding, and placing breeder flocks for the production of eggs to be hatched as broiler chicks, (2) hatching the broiler eggs and placing the broiler chicks, (3) raising the chicks for a period of seven to nine weeks, (4) catching and cooping the grown-out chickens and hauling them to processing facilities, (5) preparing the broilers for market (R. 526-527). Originally each step was in the hands of a different entity but gradually the growers, hatcherymen, feed dealers, etc. integrated into most or all phases of broiler production (R. 533). Today more than 95 percent of the broilers marketed in the U.S. are marketed by integrated broiler producers (R. 526).

The typical "integrator", as the integrated broiler producer is known, performs each of the five steps in broiler production listed above internally with the partial exception of step 3, the so-called "grow-out stage. In this stage the integrators hire "growers", as they are called, to provide certain services in raising the integrator's chicks to maturity (when the integrator resumes custody of his chickens). Even during the grow-out stage, when the grower has physical custody of the chicken, the integrator, not the grower, makes all decisions regarding the diet and type of feed of the growing chickens and supplies all of the feed consumed by the chickens. The integrator, not the grower, supplies the medicines, vaccines, and other health supplies for the growing chickens, plus any veterinary services that may be necessary. The integrator, not the grower, transports the chicks

[1] "R." references are to the joint appendix of the parties in the court of appeals, which has been lodged with this court together with the entire record in the court of appeals.

and feed to the growers and the grown-out chickens from the grower to the processing plant. The integrator, not the grower, provides all the equipment and some or all of the labor for catching, cooping, and loading the live birds. The integrator makes all decisions with regard to the age and size at which the birds shall be marketed, and even furnishes fieldmen or supervisors who visit the grower frequently (usually every week) to monitor the grower's performance. (R. 529).

More than 90 percent of the total cost of producing a broiler is incurred by the integrator and less than 10 percent by the grower (R. 474, 531, 533). The grower's investment is limited mainly to the buildings in which the chickens are housed during the grow-out period. Title to the birds remains with the integrator throughout the grow-out phase.[2]

[2] Of the 57 grower contracts in use by petitioner's members and former members, 54 vest ownership of the broiler flocks placed with growers entirely in the members. One contract provides that the member and the grower shall have "joint ownership," and another that the member agrees "to sell broiler chicks" and "to sell to Grower the necessary feed, vaccines, medication, and sanitation products necessary to raise said birds to processing age." (R. 528). However, the latter contract further provides that "in the event of death of the birds at any time prior to the time they are picked up from the Grower's premises, Grower assumes any losses due to the expenditure of labor, use of land, facilities, equipment, and the cost of any fuel or litter. [Member] assumes the loss of the cost of the chicks, feed and other materials supplied by [member]." And undisputed affidavits establish that the title provisions in these two contracts are included only to accommodate financing.

The final contract is the one in use by a member which is itself a cooperative, whose membership includes persons engaged in growing broiler chickens which are processed and marketed cooperatively through their association. (R. 528). Membership of one producer's cooperative in another such cooperative, and federations of cooperatives, are authorized by the Capper-Volstead provision that "such associations may have marketing agencies in common." 7 U.S.C. § 291; see *Sunkist Growers, Inc. v. Winckler & Smith Citrus Products Co.*, 370 U.S. 19 (1962).

While most contracts with growers provide for full payment only with respect to live birds surviving to marketable age, mortality of birds during the grow-out phase of broiler production averaged only 3.26 percent in a survey of broiler flocks (R. 474).

As the owner and marketer of the birds, the integrator bears the primary risk of changes in prices due to market conditions. The government concedes that those conditions are typical of agricultural markets and in some cases even more difficult for producers to cope with than is true with respect to other agricultural commodities (R. 534). Fresh broilers, which constitute 90 percent of the broiler market, are a perishable commodity and must be marketed regardless of demand. The sellers are scattered and uninformed with respect to conditions of demand and supply, and consequently the market is highly susceptible to overproduction. Demand is both seasonal and cyclical. The buying side of the market is highly concentrated. (R. 534, 536). As a result of these conditions integrator profits are both unstable and low while the grower enjoys a stable return in the nature of a wage. (R. 478-481, 531).

The Formation of Petitioner and the Antitrust Litigation.

In 1969 the Antitrust Division of the Department of Justice issued a business review letter in which it indicated that the National Egg Company, a cooperative association of egg producers, would not forfeit its Capper-Volstead status if it admitted to membership an integrated egg producer that contracted out the care of laying hens in the same manner—described above—as broiler integrators contract out the growing-out of broiler chickens. On the basis of the Antitrust Division's position as articulated in this letter, petitioner association was formed in 1970 (R. 525).

The Justice Department changed its view of the law in 1971 and two years later brought this suit. In the wake of the government suit more than 20 treble damage class actions were brought against petitioner and its members on behalf of virtually all the nation's purchasers of broiler chickens (other

than the ultimate consumer). These actions are pending at the district court level in the Fifth Circuit.[3]

In the present case the district court granted summary judgment for petitioner on the basis of the facts stipulated by the parties, concluding (App. B., *infra* at A-32):

> "The involvement of the members of the defendant association in the production of the broilers is sufficient to justify their classification as '[p]ersons engaged in the production of agricultural products as farmers . . .' within the meaning of the Capper-Volstead Act and to permit their claim to the antitrust exemption to the extent permitted by that statute."

The Court of Appeals for the Fifth Circuit reversed. Conceding that the question it had to decide—the Capper-Volstead status of an integrated poultry producer—was "novel," the court was unable to "conceive that the ordinary, popular sense of the word 'farmers' would fit broiler integrator companies. . . . Whatever else farming may mean, an irreducible minimum must be either husbandry of animals or crops or farm ownership." App. A., *infra*, at A-13. The court stated (*id.* at A-13):

> "NBMA cautions us against a romantic view of agriculture and points out that agriculture has changed greatly from the Jeffersonian conception of the self-sufficient yeoman. We agree that agriculture has changed much. But the ordinary, popular meaning of the word 'farmer' has not. When the common run of people wish to speak of the broader spectrum of modern agriculture, the word generally used is 'agribusiness.' 'Farmer' still means what it meant in 1922—one who owns or operates a farm. . . . We believe the Capper-Volstead Act, with its listing of

[3] In Re: Chicken Anti-Trust Litigation, Civil No. C74-2454A (N.D. Ga.).

beneficiaries—farmers, planters, ranchmen, dairymen, nut or fruit growers—has a feeling, a cadence of meaning, that has no place for NBMA's member companies."

Reviewing the legislative history of the Capper-Volstead Act (which was enacted in 1922), the court emphasized the defeat of a proposed amendment (the Phipps amendment) that would have permitted sugar and other manufacturers to come under the shelter of the Act if they entered into pre-planting contracts with the farmers from whom they bought the agricultural products used in their manufacturing activities and the contracts gave the farmers a percentage of the manufacturer's price for the finished product. The court acknowledged "that there are differences between the contractual arrangement prevalent in the broiler industry and the arrangements that would have been covered by" the rejected amendment. App. A., *infra*, at A-18. But it concluded: "Reading farmers in its ordinary sense as meaning those who own or operate farms focuses the benefits of the Act more closely on the persons central to Congress's concern and it keeps subject to the antitrust laws those companies that prepare farm products for market." *Id.* at A-19.

REASONS FOR GRANTING THE WRIT

This is another case in which the increasingly aggressive enforcement of the antitrust laws by the Department of Justice has run head on into a regulatory scheme designed to subject an industry to a different standard from a purely competitive one. The industry here is a branch of agriculture. Historically the policy of competition that underlies the antitrust laws has been deemed inapplicable to agriculture because of the special economic conditions prevailing in that sector of the economy. As this Court stated in *Tigner v. Texas*, 310 U.S. 141, 145-147 (1940):

> "An impressive legislative movement bears witness to general acceptance of the view that the differences between agriculture and industry call for differentiation in the formulation of public policy. . . . At the core of all these enactments [including the Capper-Volstead Act, specifically cited by the Court] lies a conception of price and production policy for agriculture very different from that which underlies the demands made upon industry and commerce by the antitrust laws. These various measures are manifestations of the fact that in our national economy agriculture expresses functions and forces different from the other elements in the total economic process."

The Capper-Volstead Act, 7 U.S.C. §§ 291-292, enacted in 1922, authorizes the formation of nonprofit cooperatives of "persons engaged in the production of agricultural products as farmers," and exempts cooperatives so formed from Section 1 of the Sherman Act. The members of petitioner association are conceded to be "persons engaged in the production of agricultural products"; the sole question is whether they are "farmers" within the meaning of the Act. This question, as we shall show, is one of great importance to U.S. agriculture. It was decided below by the only court of appeals likely ever to have occasion to consider the question and that court's decision is both plainly

incorrect and based on an approach to statutory construction that this Court rejected just last Term in *Bayside Enterprises Inc. v. National Labor Relations Board*, — U.S. —, 97 S.Ct. 576 (1977). Moreover, the question presented is a pure issue of law which arises on stipulated facts and can be resolved with minimal burden on this Court. The practical and juridical importance of the question, the manner in which it was decided below, the infeasibility of relitigating it in another circuit, and the state of the record afford compelling reasons why this petition for certiorari should be granted.

1. Virtually all of the nation's output of poultry products is produced by integrated producers who contract out some services involved in the raising of their poultry to independent contractors known as growers. The members of petitioner association are producers of broiler chickens but the identical type of contract is used by producers of eggs, turkeys, ducks, and other poultry products. Hence the decision below, if it is allowed to stand, will exclude the vast bulk of the nation's poultry producers from the benefits of the cooperative movement in agriculture that the Capper-Volstead Act was designed to foster.

The broiler chicken industry alone is a vast one, with sales of $3 billion in 1976.[4] The sales of all poultry products that year were $7.1 billion.[5] It would be surprising if the Congress that carefully specified the inclusion within the protective scope of the Capper-Volstead Act of "nut growers" meant to forbid the poultry industry—a big part of U.S. agriculture even in 1922[6]—to form exempt marketing cooperatives. But that is

[4] U.S. Dep't. of Agriculture, Economic Research Service, *Poultry and Egg Situation*, 18 (June 1977).

[5] *Id.*

[6] See U.S. Dep't of Agriculture, Agricultural Marketing Service, *Agricultural Statistics* 1941 (tab. 1). Poultry and egg cooperatives were common even before 1920. See Knapp, *The Rise of American Cooperative Enterprise 1620-1920*, pp. 301-04 (1969).

the effect of the decision below, since integrated producers such as the members of petitioner association produce and market the vast majority of the nation's output of poultry products. To be sure, the court of appeals in dictum suggested that the growers whom the producers hire to provide services in the raising of their chickens may form Capper-Volstead cooperatives. But aside from the fact that the court's "ordinary, popular meaning" approach to the definition of "farmer" logically excludes the growers (who lack both "farmland" and title to the "crop"), they are a relatively unimportant factor in the production of poultry products, supplying elements accounting for less than 10 percent of the cost of production. The growers are analogous to hired help producing for the account of another—in this case, the integrated producers. It is the latter who own and market the broiler chickens and who the court of appeals held may not form exempt cooperatives of any kind.

2. The decision below, if allowed to stand, may bring about far-reaching changes in the organization of an important branch of American agriculture—quite apart from the possible consequences of the pending private damage actions for the industry's financial stability. The decision, in forbidding poultry producers to form exempt cooperatives, confronts them with two options. The first is to integrate forward into the grow-out phase, thereby transforming the growers from independent contractors into employees. See Tobin & Arthur, *Dynamics of Adjustment in the Broiler Industry* 36 (1964).[7] It is undisputed that if the integrated producers did this they would be "farmers" entitled to form marketing cooperatives.[8] The second option is for the pro-

[7] Already 9 percent of broilers are grown-out on company-owned rather than independent growers' facilities. U.S. Dep't of Agriculture, Economic Research Service, *Poultry and Egg Situation*, 43 (June 1977).

[8] An additional reason why they might do so is that preservation of their "farmer" status is important for tax as well as anti-trust reasons. See, *e.g.*, *United States v. Chemell*, 243 F.2d 944 (5th Cir. 1957) (integrator owners of a replacement hatchery held to qualify

ducers to forego the cooperative form. The first option would promote "agribusiness"—contrary to the purposes of the Capper-Volstead Act as perceived by the court of appeals below. The second would expose the industry to the very risk of excessive price fluctuations and market uncertainty that the Capper-Volstead Act and the cooperative movement were designed to reduce.[9] Either development would harm the consumer, and neither is likely to help anyone in the farm sector—even the contract grower. The Justice Department concedes that integrated broiler production has developed in areas of limited agricultural enterprise and has replaced or supplemented the incomes received by rural families from other sources (R. 539). The transformation of growers into employees, or the disbanding of marketing cooperatives of broiler producers, will not help those families.

3. The effects of the decision of the court of appeals will be felt beyond the poultry industry. The form of integration pioneered by poultry farmers is increasingly being imitated elsewhere in agriculture, notably in hog farming where integrated production, with contracting out of the grow-out phase, is emerging patterned on poultry farming;[10] and in cattle farming, where the Department of Agriculture is currently urging the formation of cooperatives analogous to petitioner association.[11]

---

as "farmers" within the meaning of Treas. Reg. 111, §§29.22(a)-7 and 29.22(c)-6); *Maple Leaf Farms, Inc.*, 64 T.C. 438 (1975) and *Garth*, 56 T.C. 610 (1971) (integrated duck and egg producers, respectively, held to come within the term "farmer" as used in Treas. Reg. § 1.471-6(a)). The court of appeals' decision in this case, based as it is on a conclusion that integrated poultry producers are not "farmers" in the "ordinary, popular sense," may encourage integrators to make the structural changes indicated in order to avoid jeopardizing valuable tax benefits.

[9] See note 14 *infra* and accompanying text.

[10] Roy, *Contract Farming and Economic Integration*, 12, 221-265 (2d ed. 1972)

[11] See note 17 *infra* and accompanying text.

The decision below casts a long shadow over developments such as these which may enhance still further the efficiency of U.S. agriculture, on which much of the world depends.

4. Consequences so far-reaching should not be allowed to flow from an unreviewed lower-court decision. Nor is the question presented the kind that can be permitted to simmer at the circuit level until a conflict between circuits is generated that makes Supreme Court review inescapable.[12] Since petitioner is the only national cooperative of broiler producers, this litigation will decide once and for all the broiler industry's entitlement to the protection of the Capper-Volstead Act. To be sure, a similar issue might arise in another circuit involving a different branch of poultry production—eggs, or turkeys, or ducks—or some other branch of agriculture altogether, such as hog or cattle farming. But the $3 billion broiler industry will have to comply with the decision below. Any restructuring of the industry necessitated by that decision will not be deferred to await the outcome of possible litigation in another circuit that might eventually result in this Court's vindicating the Capper-Volstead rights of poultry producers. An additional consideration is that the stipulation of the facts in this case, and the exclusion of all issues other than the pure issue of law presented by the court of appeals' construction of the term "farmer" in the Capper-Volstead Act, establish ideal conditions for this Court to exercise its fundamental responsibility for the construction of federal statutes.

5. The exercise of that responsibility is all the more urgent because the court of appeals below employed an unsound method of statutory construction to reach an erroneous result. The court applied a standard of "ordinary, popular meaning" to limit the word "farmer" as it appears in the Capper-Volstead

---

[12] See Casper & Posner, *The Workload of the Supreme Court* 86 and n. 22 (1976).

Act to persons engaged in a narrow, stereotyped, and anachronistic conception of farming. Yet it is plain both from the context of the term "farmer" in the Act and its legislative history that it was intended to be a term of extension rather than of limitation. The enumeration of farmer, planter, rancher, dairyman, and nut or fruit grower was designed to prevent a narrow reading of "farmer" from curtailing the scope of the Act; it was not intended to be exhaustive but rather "descriptive of the general subject". 62 Cong. Rec. 2052 (1922). "The aim has been to make the provisions of the bill sufficiently liberal so that all cooperative farm associations operated in good faith for the benefit of its members might avail themselves of the provisions of the bill." H.R. Rep. No. 24, 67th Cong., 1st Sess. 1 (1921). An opponent of the bill described it, without contradiction, as embracing "all of those who have anything to do with raising anything from the soil or from the farm" (62 Cong. Rec. 2173 (1922)). Thus it was explicitly stated that the Act embraced gardeners and plantation owners as well as the listed categories of agricultural producers. 62 Cong. Rec. 2052, 2172 (1922); note 13 *infra*. There is no basis for reading the Act as excluding producers of broiler chickens.

This is further shown by the legislative treatment of two important issues in the definition of "farmer". The first is whether a corporation engaged in agricultural production is a farmer within the meaning of the Act. It is. *E.g., Case-Swayne Co., Inc. v. Sunkist Growers, Inc.*, 369 F.2d 449 (9th Cir. 1966), *rev'd on other grounds*, 389 U.S. 384 (1967). Yet in popular parlance a farmer is a natural person. The second question is the status of owner and tenant under a sharecropping arrangement. The legislative history makes crystal clear that the landowner whose land is farmed by tenant farmers is a "farmer" within the meaning of the Act.[13] In the typical sharecropping

[13] "Mr. Lyman . . . [I]f there are certain planters in the South with large plantations, probably with a number of tenants on their places, who want to belong to these associations, I think that those owners should come under this . . .

"Senator Walsh of Montana. Exactly . . ."
Hearings on H.R. 2373 before a Subcomm. of the Senate Comm. on the Judiciary, 67th Cong. 1st Sess. 195 (1921).

arrangement, the owner contributes land, fertilizer, and seeds and the tenant farmer his labor, and the parties split the proceeds from the sale of the crop 50-50. The equal division of the revenue implies an equal contribution to the cost of raising the crop. If the landowner is a "farmer" under the Capper-Volstead Act, though he incurs only 50 percent of the cost of producing the crop, *a fortiori* the broiler integrator—who incurs more than 90 percent of the cost of producing a broiler chicken —is a farmer.

The court below forgot that a statute's "general purpose is a more important aid to the meaning than any rule which grammar or formal logic may lay down." *United States v. Whitridge*, 197 U.S. 135, 143 (1905) (per Holmes, J.). Consideration of statutory purpose confirms that the integrated broiler producer is indeed a farmer. He bears the primary risk of market fluctuations; this risk is a principal theme in the legislative history of the Capper-Volstead Act.[14] He owns the crop. Even during the grow-out phase, when the grower has physical custody, it is the integrated producer who supplies feed and other supplies, monitors the growers' activities, and assumes most of the risk of market changes. As mentioned, the integrated producer incurs more than 90 percent of the total cost of producing broilers. Although he does not own farmland, neither does the grower: broiler chickens are raised in buildings rather

[14] The Congressman who debated the bill were united in their concern about "the instability of agricultural prices, the rapid and absurd fluctuations to which they are subjected" (61 Cong. Rec. 1041 (1921)), the need for "stabilizing the market" (62 *id.* 2059 (1922)), and the "hazardous" character of agricultural production (62 *id.* 2060 (1922)). See also 61 *id.* 1042 (1921); 62 *id.* 2052, 2262 (1922).

than left to wander through the barnyard. If a farmer must have farmland to be within the Capper-Volstead Act, there are no poultry farmers. It is to such absurdities that the "ordinary, popular meaning" standard applied by the court of appeals logically leads.

The court of appeals below attached undue significance to occasional paeans to the small farmer that appear in the legislative history of the Act. A fair reading of that history reveals that the Act's supporters were proponents not of small farmers but of agriculture generally. As one supporter of the bill stated, "The farmer is a business man. . . . Agriculture is the biggest of all business." 62 Cong. Rec. 2217 (1922) (remarks of Senator Townsend). See also 62 *id.* 2172 (1922). What was deplored was not "agribusiness" but rather the obstacles that the antitrust laws were believed to place in the way of the farmer's utilizing businesslike methods to market his output.[15] See, *e.g.*, 62 Cong. Rec. 2218 (1922). If the broiler integrator took over the entire grow-out phase, transforming the contract growers into his employees, he would be even more of an agribusinessman—but he would concededly be a "farmer" within the meaning of the Capper-Volstead Act (see p. 11, *supra*).

Especially questionable is the court of appeals' reliance on the defeat of the Phipps amendment. The amendment would have permitted firms that manufactured sugar from beets (or textiles from cotton) to form exempt marketing cooperatives if they had pre-planting contracts with their agricultural suppliers whereby the supplier would receive a percentage of the manufacturer's price for his finished product. See 62 Cong. Rec. 2227, 2273 (1922). So far as appears, the proposed amendment was rejected solely because Congress did not wish to exempt the producers of any nonagricultural product—such as

---

[15] Suggestive in this regard is the Congressmen's preference for the term "agriculturist" over "farmer". See *e.g.*, 62 Cong. Rec. 2263 (1922).

manufactured sugar and textiles—from Section 1 of the Sherman Act. But broiler chickens are conceded to be an agricultural product. The integrated broiler producer is not a manufacturer of some nonagricultural finished product who buys an agricultural input from a farmer; he is the producer of an agricultural product who delegates a small part of the production to another agricultural producer, the contract grower.[16]

6. In *Bayside Enterprises, Inc. v. National Labor Relations Board*, — U.S. —, 97 S.Ct. 576 (1977), this Court last term held that certain truck drivers employed by integrated poultry producers were not "agricultural laborers" within the meaning of the Fair Labor Standards and National Labor Relations Acts. In so holding the Court gave controlling weight to the interpretation of the responsible administrative agency, in that case the Labor Board. Because of the different structure of administration of the Capper-Volstead Act from that of the labor statutes, there is no formal administrative interpretation of the applicability of the Capper-Volstead Act to integrated broiler producers. However, the practical construction of the Act by the responsible public agencies makes clear that integrated broiler producers are indeed farmers within the meaning of the Act. The Department of Agriculture assisted in the formation of petitioner association and has worked closely with it.[17] Consistent with the uniform understanding of the federal

---

[16] The statement in the court of appeals' opinion that "a few [of petitioner's members] operate only processing plants" (App. A., *infra*, at A-4) is contrary to the conceded facts which show that *all* members of petitioner assume major responsibility for their grow-out operations and full responsibility for most if not all other operations involved in broiler production. (See, *e.g.*, R. 527-529).

[17] Affidavit of Bob M. Anthony (in record certified to this Court but not printed in joint appendix), at p. 6. The Department of Agriculture continues to encourage the formation of cooperative associations of producers who contract out various production functions—including the "grow-out" phase of beef production. See Ward "Integrated Cattle Marketing—A Better Way," U.S. Dep't of Agr., Farmer Cooperative Serv., FCS Info. 107, May 1977, which is appended hereto as App. E, *infra*, at A-38.

agricultural agencies, the Farm Credit Administration recently recognized the legitimacy of petitioner's status as a cooperative of agricultural producers by approving its eligibility to borrow from the New Orleans Bank for Cooperatives,[18] pursuant to statutory standards materially identical to those of the Capper-Volstead Act. See 12 U.S.C. § 2129.

The court of appeals' refusal to accord any weight to the practical construction of the statute by the Department of Agriculture and the Farm Credit Administration was a particularly serious error because of the private antitrust damage liability to which cooperative members are exposed if they guess wrong as to the meaning of the Act,[19] and the absence of any procedure for obtaining a formal administrative determination of eligibility. The members of the petitioner association have been laid open to massive potential liability by virtue of having formed a cooperative with the blessing of both the Department of Agriculture and the Department of Justice. Elementary fairness and the logic of the Court's decision in **Bayside** required that the court of appeals below should have given controlling, rather than zero, weight to the agricultural agencies' practical construction that integrated broiler producers are farmers within the meaning of the Capper-Volstead Act.

---

[18] Affidavit of Bob M. Anthony, *supra* note 17, at p. 17.

[19] A consideration stressed by this Court in previous decisions construing the Capper-Volstead Act. See *Sunkist Growers, Inc. v. Winckler & Smith Citrus Products Co.*, 370 U.S. 19, 29 (1962); *Case-Swayne Co., Inc. v. Sunkist Growers, Inc.*, 389 U.S. 384, 397 (1967) (separate opinion of Harlan, J.).

CONCLUSION

The question presented vitally affects a major industry. Its resolution by the court of appeals below, if allowed to stand, may lead to far-reaching changes in that industry, harmful to both consumer and farmer, and perhaps in other branches of agriculture as well. Review of the question by this Court cannot properly be deferred to some subsequent case raising the same or a similar issue. Moreover, the decision below is based on an unsound and discredited theory of statutory construction and is plainly incorrect.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

MICHAEL A. DOYLE
FREDERICK H. VON UNWERTH
PETER KONTIO
ALSTON, MILLER & GAINES
1200 Citizens and Southern
National Bank Building
35 Broad Street
Atlanta, Georgia 30303
(404) 588-0300

RICHARD A. POSNER
1222 East Fifty-Sixth Street
Chicago, Illinois 60637
Counsel for Petitioner

APPENDIX

APPENDIX A

(Corrected)

UNITED STATES OF AMERICA,
Plaintiff-Appellant,

v.

NATIONAL BROILER MARKETING ASSOCIATION,
Defendant-Appellee.

No. 76-2115.

United States Court of Appeals,
Fifth Circuit.

April 22, 1977.

Government brought antitrust action against association of companies which marketed broiler chickens. The District Court for the Northern District of Georgia, Albert J. Henderson, Jr., Chief Judge, dismissed and Government appealed. The Court of Appeals, Lewis R. Morgan, Circuit Judge, held that broiler integrators which performed many of the tasks necessary to bring broiler chickens to consumers but which did not actually grow the chickens, instead contracting that job out to growers, were not "farmers" for purposes of the Capper-Volstead Act exemption from the antitrust laws for farm cooperatives.

Reversed.

1. **Monopolies Key 17(4)**

Even cooperatives which come within the protection of the Capper-Volstead Act do not thereby obtain complete antitrust immunity. Capper-Volstead Act, §§ 1, 2, 7 U.S.C.A. §§ 291, 292.

2. **Statutes Key 188**

Words in statute should be given their ordinary, popular meaning unless Congress clearly meant the words to have some more technical meaning.

3. **Monopolies Key 17(4)**

Broiler integrator companies which had taken on more than one of the tasks necessary to bring broiler chickens to consumers but which had not performed the actual raising of the broiler chicks to maturity, instead allowing that activity to be handled by contract growers who were paid for growing the chickens, title to which remained in the broiler integrators, were not "farmers" for purposes of the Capper-Volstead Act exemption from the antitrust laws for farmers cooperatives. Capper-Volstead Act, §§ 1, 2, 7 U.S.C.A. §§ 291, 292.

See publication Words and Phrases for other judicial constructions and definitions.

4. **Monopolies Key 17(4)**

As used in the Capper-Volstead Act, the term "farmer" still means what it meant in 1922, i.e., one who owns or operates a farm. Capper-Volstead Act, §§ 1, 2, 7 U.S.C.A. §§ 291, 292.

5. **Monopolies Key 17(4)**

Purposes of the Capper-Volstead Act were to improve the bargaining position of farmers vis-a-vis corporate middlemen in order to increase farm income and to stop the rise of tenancy and the migration of farm families to the cities; Congress did not intend that benefits afforded to farmers by the Act be extended to include the corporate entities with which farmers dealt. Capper-Volstead Act, §§ 1, 2, 7 U.S.C.A. §§ 291, 292.

6. **Statutes Key 184**

When a court takes account of changed reality in interpreting statutes, the goal remains effectuation of congressional purpose, not alteration of it.

Appeal from the United States District Court for the Northern District of Georgia.

Before MORGAN and HILL, Circuit Judges, and NOEL,* District Judge.

LEWIS R. MORGAN, Circuit Judge:

We must decide whether broiler industry companies that neither own nor operate farms can be "farmers" within the meaning of a 1922 federal statute called the Capper-Volstead Act,[1] which gives farmers' cooperatives some measure of protection from the antitrust laws. The question is a novel one. After careful study of the Act and its legislative history, we are convinced that Congress's purpose in enacting Capper-

---

* Senior District Judge of the Southern District of Texas sitting by designation.

[1] 7 U.S.C. §§ 291-92.

Volstead does not mandate or permit protection of these broiler industry companies from the proscriptions of the antitrust laws. The district court held otherwise, and we reverse.

I. FACTS

A. *The Broiler Industry*

Broilers are young chickens that are slaughtered when seven-to-nine weeks old, then processed and offered for sale ready-to-cook. The broiler industry comprises generally two types of entities—integrator companies and contract growers. The defendant National Broiler Marketing Association (NBMA) is composed of integrator companies.

"Integrators" have that name because over the years they have accomplished what is called the vertical integration of much of the broiler industry. That is, they have taken on more than one of the tasks necessary to bring broilers to consumers. Thus, many NBMA members[2] own and operate not only processing plants, but also feed mills, hatcheries, and breeder flocks (for the production of broiler eggs). Still, most NBMA members are processors, and a few operate only processing plants.

The one major operation not generally performed by the integrator firms is the actual raising of the broiler chicks to maturity. This is handled by farmers called contract growers. These growers raise the chicks on their own farms in their own buildings. They provide their own labor and equipment. The growers also supply the water and electricity needed during the grow-out process, as well as the litter and fuel used in lining and heating the broiler houses. The day-to-day husbandry of the flocks is left to the growers.

[2] This also includes companies owned by NBMA members or companies commonly owned with NBMA members.

Title to the broiler chicks is retained by the broiler integrators during the grow-out process. The integrators also supply feed and veterinary services. The integrators decide the number and timing of chick placements and the age and size at which the birds will be marketed.

Generally, the growers are treated by the integrators as independent contractors. The contracts provide for a minimum and maximum payment per bird or per pound to the grower.[3]

B. *The Litigation*

The government brought a civil antitrust action[4] against NBMA, alleging that the Association's members and others had combined to fix broiler prices and to restrict broiler production in order to increase broiler prices. After a period of discovery, both parties moved for partial summary judgment on agreed facts. The issue was whether NBMA's members are farmers within the meaning of the Capper-Volstead Act, which states generally that "[p]ersons engaged in the production of agricultural products as farmers, planters, ranchmen, dairymen, nut or fruit growers" may engage in certain activities cooperatively.[5]

[3] The minimum payment provided in some contracts is less than the cost incurred by the average grower in raising a flock of broilers. Ordinarily, NBMA members are free to lower the payment scale under their contracts with growers before any new flock is grown in response to rising feed costs or falling market prices for broilers. Members are also free to reduce the number of broilers or flocks placed with growers in response to market conditions. Members are usually free to terminate their contracts with growers after any flock and in fact have done so for a variety of reasons.

[4] The action was brought under section 4 of the Sherman Act, 15 U.S.C. § 4, to prevent and restrain alleged violations of section 1 of that Act, 15 U.S.C. § 1.

[5] The full text of the Act is as follows:

§ 291. Authorization of associations; powers

Persons engaged in the production of agricultural products as farmers, planters, ranchmen, dairymen, nut or fruit growers

may act together in associations, corporate or otherwise, with or without capital stock, in collectively processing, preparing for market, handling, and marketing in interstate and foreign commerce, such products of persons so engaged. Such association may have marketing agencies in common; and such associations and their members may make the necessary contracts and agreements to effect such purposes: *Provided, however,* That such associations are operated for the mutual benefit of the members thereof, as such producers, and conform to one or both of the following requirements:

First. That no member of the association is allowed more than one vote because of the amount of stock or membership capital he may own therein, or,

Second. That the association does not pay dividends on stock or membership capital in excess of 8 per centum per annum.

And in any case to the following:

Third. That the association shall not deal in the products of non-members to an amount greater in value than such as are handled by it for members.

§ 292. *Monopolizing or restraining trade and unduly enhancing prices prohibited; remedy and procedure*

If the Secretary of Agriculture shall have reason to believe that any such association monopolizes or restrains trade in interstate or foreign commerce to such an extent that the price of any agricultural product is unduly enhanced by reason thereof, he shall serve upon such association a complaint stating his charge in that respect, to which complaint shall be attached, or contained therein, a notice of hearing, specifying a day and place not less than thirty days after the service thereof, requiring the association to show cause why an order should not be made directing it to cease and desist from monopolization or restraint of trade. An association so complained of may at the time and place so fixed show cause why such order should not be entered. The evidence given on such a hearing shall be taken under such rules and regulations as the Secretary of Agriculture may prescribe, reduced to writing, and made a part of the record therein. If upon such hearing the Secretary of Agriculture shall be of the opinion that such association monopolizes or restrains trade in interstate or foreign commerce to such an extent that the price of any agricultural product is unduly enhanced thereby, he shall issue and cause to be served upon the association an order reciting the facts found by him, directing such association to cease and desist from monopolization or restraint of trade. On the request of such association or if such association fails or neglects for thirty days to obey such order, the Secretary of Agriculture shall file in the district court in the judicial district in which such association has its principal place of business a

[1] The district court held that NBMA's members are farmers as the term is used in the Act and granted NBMA's motion for

certified copy of the order and of all the records in the proceeding, together with a petition asking that the order be enforced, and shall give notice to the Attorney General and to said association of such filing. Such district court shall thereupon have jurisdiction to enter a decree affirming, modifying, or setting aside said order, or enter such other decree as the court may deem equitable, and may make rules as to pleadings and proceedings to be had in considering such order. The place of trial may, for cause or by consent of parties, be changed as in other causes.

The facts found by the Secretary of Agriculture and recited or set forth in said order shall be prima facie evidence of such facts, but either party may adduce additional evidence. The Department of Justice shall have charge of the enforcement of such order. After the order is so filed in such district court and while pending for review therein the court may issue a temporary writ of injunction forbidding such association from violating such order or any part thereof. The court may, upon conclusion of its hearing, enforce its decree by a permanent injunction, or other appropriate remedy. Service of such complaint and of all notices may be made upon such association by service upon any officer or agent thereof engaged in carrying on its business, or on any attorney authorized to appear in such proceeding for such association, and such service shall be binding upon such association, the officers, and members thereof.

7 U.S.C. §§ 291-92.

Eight years prior to passage of the Capper-Volstead Act, Congress enacted section 6 of the Clayton Act, 15 U.S.C. § 17:

§ 17. *Antitrust laws not applicable to labor organizations*

The labor of a human being is not a commodity or article of commerce. Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws.

This was the first Congressional action to protect cooperative endeavors from the antitrust laws. Capper-Volstead's effect was "to clarify the exemption for agricultural organizations and to extend it to cooperatives having capital stock." *Case-Swayne Co. v. Sunkist Growers, Inc.*, 389 U.S. 384, 391, 88 S.Ct. 528, 532, 19 L.Ed.2d 621 (1967).

partial summary judgment.[6] Then the government, with NBMA's acquiescence, filed an amended complaint, deleting all of the allegations that survived the partial summary judgment.[7] The parties stipulated that the government would be allowed to bring a later action reviving those allegations.

The district court granted final judgment in favor of NBMA,[8] and the case is here on the government's appeal of the district court's final order.

II. DISCUSSION

We have noted already that the issue we must decide today is novel. In fact, the Capper-Volstead Act, since its enactment in 1922, has received little attention from the Supreme Court.[9]

---

[6] *United States v. National Broiler Marketing Ass'n*, 1975—2 CCH Trade Cases ¶ 60,509 (N.D.Ga. Aug. 26, 1975).

[7] Even cooperatives that come within the protection of Capper-Volstead do not thereby obtain complete antitrust immunity. *See Maryland & Virginia Milk Producers Ass'n v. United States*, 362 U.S. 458, 80 S.Ct. 847, 4 L.Ed.2d 880 (1960); *United States v. Borden Co.*, 308 U.S. 188, 60 S.Ct. 182, 84 L.Ed. 181 (1939).

[8] *United States v. National Broiler Marketing Ass'n*, 1976—1 CCH Trade Cases ¶ 60,801 (N.D.Ga. Mar. 16, 1976).

[9] The Supreme Court's most recent decision interpreting Capper-Volstead is *Case-Swayne Co., Inc. v. Sunkist Growers, Inc.*, 389 U.S. 384, 88 S.Ct. 528, 19 L.Ed.2d 621 (1967), in which the Court held that the Sunkist cooperative could not qualify for the exemption because some of its members were packing houses that contracted with fruit growers to handle the growers' fruit for cost plus a fixed fee. 389 U.S. at 387, 88 S.Ct. 528. The Supreme Court in *Case-Swayne* emphasized that the legislative history of Capper-Volstead made clear Congress's purpose to limit the shelter of the Act to actual growers. *Id.* at 391-93, 88 S.Ct. 528. Thus, the Court concluded that "Congress did not intend to allow an organization with such nonproducer interests [*i.e.*, the packing houses] to avail itself of the Capper-Volstead exemption." *Id.* at 395-96, 88 S.Ct. at 535.

The instant case is a logical successor to *Case-Swayne*. In *Case-Swayne*, the Supreme Court had little difficulty concluding that the packing houses were not farmers. Here, entities somewhat analogous to the packing houses, broiler integrators, assert that they are farmers for the reasons stated in the text *infra*.

Moreover, no significant body of Capper-Volstead law has developed in the lower federal courts.[10] And the legal commentary has not been abundant.[11]

The remaining Supreme Court decisions about Capper-Volstead are *Sunkist Growers, Inc. v. Winckler & Smith Citrus Products Co.*, 370 U.S. 19, 82 S.Ct. 1130, 8 L.Ed.2d 305 (1962) (several cooperatives may join together as one organization without losing Capper-Volstead protection); *Maryland & Virginia Milk Producers Ass'n v. United States*, 362 U.S. 458, 80 S.Ct. 847, 4 L.Ed.2d 880 (1960) (Capper-Volstead not a license for farmers' cooperatives to engage in predatory practices otherwise violative of section 2 of Sherman Act); and *United States v. Borden Co.*, 308 U.S. 188, 60 S.Ct. 182, 84 L.Ed. 181 (1939) (cooperative's combination with nonproducers not protected by Capper-Volstead; Capper-Volstead section 2 not exclusive remedy for cooperatives's anti-competitive conduct).

See also Tigner v. Texas, 310 U.S. 141, 60 S.Ct. 879, 84 L.Ed. 1124 (1940) (state antitrust law that exempts agriculture enterprises does not violate federal Constitution); *Frost v. Corporation Commission*, 278 U.S. 515, 49 S.Ct. 235, 73 L.Ed. 483 (1929) (Brandeis, J., dissenting) (discussion of cooperative movement); *Liberty Warehouse Co. v. Burley Tobacco Growers' Co-operative Marketing Ass'n*, 276 U.S. 71, 48 S.Ct. 291, 72 L.Ed. 473 (1928) (statute making illegal the witting interference with contract between farmer and cooperative not violative of federal Constitution).

[10] The court of appeals and district court decisions treating Capper-Volstead either reached the Supreme Court, *see* note 9 *supra*, or are fairly routine applications of the principles announced in the Supreme Court opinions, *e. g.*, *Pacific Coast Agricultural Export Ass'n v. Sunkist Growers, Inc.*, 526 F.2d 1196 (9th Cir. 1975), *cert. denied*, 425 U.S. 959, 96 S.Ct. 1741, 48 L.Ed.2d 204 (1976) (applying *Borden* and *Maryland & Virginia Milk Producers*); *Treasure Valley Potato Bargaining Ass'n v. Ore-Ida Foods, Inc.*, 497 F.2d 203 (9th Cir.), *cert. denied*, 419 U.S. 999, 95 S.Ct. 314, 42 L.Ed.2d 273 (1974) (potato marketing associations' activities qualified as marketing within the meaning of CapperVolstead); *North Texas Producers Ass'n v. Metzger Dairies, Inc.*, 348 F.2d 189 (5th Cir. 1965), *cert. denied*, 382 U.S. 977, 86 S.Ct. 545, 15 L.Ed.2d 468 (1966) (applying *Maryland & Virginia Milk Producers*); *Northern California Supermarkets, Inc. v. Central California Lettuce Producers Cooperative*, 413 F.Supp. 984 (N.D.Cal. 1976) (Capper-Volstead protects price-fixing by cooperative even when not incident to other collective activity); *Case-Swayne Co., Inc. v. Sunkist Growers, Inc.*, 355 F. Supp. 408 (D.C.Cal. 1971) (restructured Sunkist comes within Capper-Volstead).

[11] *See generally, e. g.*, J. von Kalinowski, 16F Business Organizations (Antitrust Laws & Trade Regulation) §§ 51.01 to -.06 (1976); Hanna, *Antitrust Immunities of Cooperative Associations*, 13 Law &

The positions of the parties may be stated briefly. The government contends that Congress clearly meant to limit the benefits of the Capper-Volstead Act to persons that own or operate farms. The government argues that this interpretation comports with the ordinary meaning of the word "farmers" and with the central themes of the legislative history of the Act. The record reflects and NBMA concedes that some of its members neither own nor operate any farms on which broilers are raised to maturity.

NBMA counters that "farmers" ought to be read "in a realistically broad sense."[12] Deemphasizing "farmers," but clearly aware that the term "farmers" is the slipper that must fit the foot, NBMA argues that Congress intended to afford Capper-Volstead's protection "to all persons actually engaged in the production of agricultural products."[13] NBMA urges that its members are so engaged principally because they own the chicks, furnish the feed, and share in the risks that attend broiler production.

Contemp. Prob. 488 (1948); Hufstedler, *A Prediction: The Exemption Favoring Agricultural Cooperatives Will Be Reaffirmed*, 22 Admin.L.Rev. 455 (1969-70); *Lemon, The Capper-Volstead Act—Will It Ever Grow Up*, 22 Admin.L.Rev. 433 (1969-70); Mahaffie, *Cooperative Exemptions Under the Antitrust Laws: A Prosecutor's View*, 22 Admin.L.Rev. — (1969-70); Mischler, *Agricultural Cooperative Law*, 30 Rocky Mtn.L.Rev. 381 (1958); Noakes, *Exemption for Cooperatives*, 19 ABA Antitrust Section 407 (1961); Pogue, *The Rationale of Exemptions from Antitrust*, 19 ABA Antitrust Section 313 (1961); Saunders, *The Status of Agricultural Cooperatives Under the Anti-Trust Laws*, 20 Fed.B.J. 35 (1960).

[12] Brief for NBMA at 42. *But see Case-Swayne Co. v. Sunkist Growers, Inc.*, 389 U.S. 384, 88 S.Ct. 528, 19 L.Ed.2d 621 (1967). In Case-Swayne, the Supreme Court characterized Capper-Volstead as constituting "special exceptions to a general legislative plan," *id.* at 393, 88 S.Ct. at 533 and further spoke of the Act as a "limited" exemption, *id.* at 391 n. 8, 88 S.Ct. 528.

[13] Brief for NBMA at 22.

Neither of the interpretations seems on its face wholly irrational. Our task is to decide which of the two is the more congenial to the language and purpose of Capper-Volstead.

A. *The Words Congress Used*

We begin with the words of the statute.[14] Congress granted a measure of protection from the antitrust laws to "[p]ersons engaged in the production of agricultural products as farmers, planters, ranchmen, dairymen, nut or fruit growers . . .". NBMA focuses on the first part of the clause—persons engaged in the production of agricultural products—as the key to the Act's coverage. It seems clear, however, that the universe of persons engaged in the production of agricultural products can be larger than the universe of those so engaged as farmers, planters, ranchmen, dairymen, nut or fruit growers.[15] The test, then, is whether broiler integrator firms are *farmers*.

---

[14] *Dupuy v. Dupuy*, 511 F.2d 641, 642 (5th Cir. 1975).

[15] The legislative history of Capper-Volstead, discussed *infra*, shows a genuine Congressional concern that the statute not be as broad as a liberal construction of "production" might allow. In *Case-Swayne Co. v. Sunkist Growers, Inc.*, 389 U.S. 384, 88 S.Ct. 528, 19 L.Ed.2d 621 (1967), the Supreme Court noted this concern, quoting from a floor debate exchange involving Senator Kellogg, a principal sponsor of the measure:

> "Mr. CUMMINS . . . . Are the words 'as farms, planters, ranchmen, dairymen, nut or fruit growers' used to exclude all others who may be engaged in the production of agricultural products, or are those words merely descriptive of the general subject?
>
> "Mr. KELLOGG. I think they are descriptive of the general subject. I think 'farmers' would have covered them all.
>
> "Mr. CUMMINS. I think the Senator does not exactly catch my point. Take the flouring mills of Minneapolis: They are engaged, in a broad sense, in the production of an agricultural product. The packers are engaged, in a broad sense, in the production of an agricultural product. The Senator does not intend

[2] What meaning are we to place on the word "farmers"? It is long settled that words in statutes should be given their ordinary, popular meaning unless Congress clearly meant the words in some more technical sense.[16] Mr. Justice Frankfurter stated the point well:

> [L]egislation when not expressed in technical terms is addressed to the common run of men and is therefore to be understood according to the sense of the thing, as the ordinary man has a right to rely on ordinary words addressed to him.

Addison v. Holly Hill Fruit Products, Inc., 322 U.S. 607, 618, 64 S.Ct. 1215, 1221, 88 L.Ed. 1488 (1944). Of course we cannot take a poll to determine the ordinary, popular meaning of the word "farmers." And our confidence in the dictionary for this purpose is not great.[17] We are left to our judgment, informed by the whole of our experience.

---

by this bill to confer upon them the privileges which the bill grants, I assume?

"Mr. KELLOGG. Certainly not; and I do not think a proper construction of the bill grants them any such privileges. The bill covers farmers, people who produce farm products of all kinds, and out of precaution the descriptive words were added.

"Mr. TOWNSEND. They must be persons who produce these things.

"Mr. KELLOGG. Yes; that has always been the understanding."

389 U.S. at 392, 88 S.Ct. at 533, *quoting* 62 Cong.Rec. 2052 (1922).

[16] *Banks v. Chicago Grain Trimmers Ass'n*, 390 U.S. 459, 88 S.Ct. 1140, 20 L.Ed.2d 30 (1968); *Malat v. Riddell*, 383 U.S. 569, 86 S.Ct. 1030, 16 L.Ed.2d 102 (1966).

[17] The relevant definitions of the word "farmer" in *Webster's Third New International Dictionary* (1964) include "a person who cultivates land or crops or raises livestock," "one that rents or leases land for cultivation," and "a person whose primary occupation is the raising of crops or livestock." *Id.* at 824.

[3] We cannot conceive that the ordinary, popular sense of the word "farmers" would fit broiler integrator companies. The husbandry of the broiler flocks is carried out neither by these firms nor by their employees, but by the contract growers. The farms where the husbandry is done are owned not by NBMA members or their employees, but by these growers. Whatever else farming may mean, an irreducible minimum must be either husbandry of animals or crops or farm ownership. Given the absence of both of these elements here, none of the factors suggested by NBMA as indicative of farming nor all of the factors together would seem a sufficient shoe horn to squeeze these companies into farmers' boots. Asked to examine the broiler business and to identify the "farmers," Justice Frankfurter's common run of men, we think, would point to the contract growers —the persons who own and operate the farms—as the "farmers."

[4] NBMA cautions us against a romantic view of agriculture and points out that agriculture has changed greatly from the Jeffersonian conception of the self-sufficient yeoman. We agree that agriculture has changed much. But the ordinary, popular meaning of the word "farmer" has not. When the common run of people wish to speak of the broader spectrum of modern agriculture, the word generally used is "agribusiness." "Farmer" still means what it meant in 1922—one who owns or operates a farm.

Mr. Justice Holmes observed once that "the meaning of a sentence is to be felt rather than to be proved . . .". *United States v. Johnson*, 221 U.S. 488, 496, 31 S.Ct. 627, 55 L.Ed. 823 (1911). We believe the Capper-Volstead Act, with its listing of beneficiaries—farmers, planters, ranchmen, dairymen, nut or fruit growers—has a feeling, a cadence of meaning, that has no place for NBMA's member companies.

B. *The Legislative History*

Our examination of the legislative history of Capper-Volstead has only reinforced our conviction that Congress meant "farmers" to be read in its ordinary sense, as urged by the government, rather than in an imaginative, broad sense, as urged by NBMA.

[5] The Act's legislative history carries two dominant themes. Congress meant to improve the bargaining position of farmers vis-a-vis corporate middlemen in order to increase farm income and, importantly, to stop the rise of tenancy and the migration of farm families to the cities. Second, Congress was convinced that the benefits afforded to farmers by Capper-Volstead should not be extended to include the corporate entities with which farmers dealt.

The Congressional concern for the weak bargaining position of the individual farmer was emphasized in the House Report:

> Whenever a farmer seeks to sell his products he meets in the market place the representatives of vast aggregations of organized capital that largely determine the price of his products. Personally he has very little if anything to say about the price. If he seeks to associate himself with his neighbors for the purpose of collectively negotiating for a fair price he is threatened with prosecution.[18]

This point was reiterated in the upper chamber's debates. Senator Kellogg, the floor manager of the legislation, spoke of the farmer as "a small holder of land" whose "means and . . . opportunities are not sufficient to allow him to take any steps whatever in placing his products with the ultimate consumer or, usually, with the middleman."[19] Thus, Congress's purpose in enacting Capper-Volstead was, as Mr. Justice Black observed, to give "individual farmers . . . through agricultural cooperatives

[18] H.R.Rep.No.24, 67th Cong., 1st Sess. 2 (1921).

[19] 62 Cong.Rec. 2050 (1922).

acting as entities, the same unified competitive advantage—and responsibility—available to businessmen acting through corporations as entities." *Maryland & Virginia Milk Producers Association v. United States*, 362 U.S. 458, 466, 80 S.Ct. 847, 853, 4 L.Ed.2d 880 (1969).

NBMA suggests that the purpose of Capper-Volstead was to make farming reliably profitable and to assure the nation a stable supply of wholesome food. This characterization is incomplete and therefore misleading. Congress meant to make farming reliably profitable in order to insure the occupational survival of small scale agriculturalists who were "widely scattered and inured to habits of individualism . . .".[20] By 1922 farming's unprofitability had sent thousands of farmers to the cities to find work.[21] Congress feared that the system of small, individually owned farms would be unable to survive. Senator Kellogg stated this apprehension during the floor debates: "In my opinion, the greatest concern confronting the statesmen of the country is the tendency to drift to the cities, the decline of agriculture, the increase of landlordism and tenancy."[22] Senator Capper reiterated the point:

[20] The quoted language is from *Tigner v. Texas*, 310 U.S. 141, 145, 60 S.Ct. 879, 881, 84 L.Ed. 1124 (1940) (Frankfurter, J.).

[21] *See* 62 Cong.Rec. 2218 (1922) (remarks of Sen. Calder).

[22] 62 Cong.Rec. 2051 (1922).

In the 1955 report of the Attorney General's National Committee to Study the Antitrust Laws, the chief reasons for protection of certain agricultural activities from the antitrust laws were listed. First among these was "preservation of the family farm as the primary unit of agricultural production." The report also listed assurance of an adequate supply of agricultural products and "the need for offsetting the weakness of the individual farmer faced with greater bargaining power in the markets where he buys and sells." J. von Kalinowski, 16F Business Organizations (Antitrust Laws and Trade Regulation § 51.01[1], at 51-3 n. 3 (1976)), *quoting* Att'y Gen. Rep. 306 (1955).

> During the last decade of the 19th century and the early decades of the 20th, mortgage indebtedness rose sharply, and

> Mr. President, every statesman looks forward to a condition as ideal when the whole country will be dotted with small farms, each operated by its owner. Every statesman deplores the spread of tenantry and insists that best citizenship can be developed only upon the individual system of farm production. Because of his peculiar characteristic of agriculture, the growers have never been able to adopt a corporate form of organization; they have, therefore, gradually fitted into the cooperative form of organization, which maintains individuality of production but enables them to unite for marketing purposes.[23]

Cooperation among farmers thus was seen as the best solution to the farmers problems because it allowed them to band together without sacrificing their social and economic individualism. The House Report, for example, rejected the corporate mechanism as the farmers' redemption:

> It is no answer that farmers may acquire the status and secure the rights of a business corporation by deeding their farms to a corporation. That is neither practical nor desirable from any standpoint.[24]

Senator Kellogg agreed:

---

there was a dramatic growth in the amount of farm tenancy in the country. By the end of the 1920s, a large percentage of the nation's farmers no longer owned the land they worked. Tenancy rates were exceptionally high in the specialized cash-crop areas of the country. In the eastern and western Cotton Belts, over two-thirds of all farmers were tenants, and in the wheat and corn belts, approximately two-fifths farmed land they did not own.

Conrat & Conrat, How U.S. Farmers Became Specialists—in Cash and Debts, *Smithsonian* 54 (Mar. 1977).

[23] 62 Cong.Rec. 2058 (1922).

[24] H.R.Rep.No.24, 67th Cong., 1st Sess. 2 (1921).

> Mr. President, of course, the farmer can not consolidate his land into great holdings or into corporate ownership, and he should not do so. The hope of this Nation, the hope of any nation, the hope of the independence and the prosperity of our people, our very civilization, depends upon the individual ownership and proprietorship of the soil.[25]

A corollary to Congress's purpose to strengthen the position of farmers vis-a-vis middlemen was Congress's resolve to leave fully subject to the antitrust laws those companies with which farmers dealt. For example, the Senate rejected[26] an amendment[27] proposed by Senator Phipps that would have extended the shelter of Capper-Volstead to companies such as sugar refineries that entered into pre-planting contracts with farmers. Senator Phipps's proposal generated this exchange on the floor:

> Mr. KELLOGG. Mr. President, I hope this amendment will not be adopted. It permits any manufacturer who converts a product into a finished commodity where the price paid by the manufacturer to the producer is controlled by or dependent upon the price received by the manufacturer for the finished product to enter into any combination he sees fit. *Of course, if they make contracts with the producers of the raw materials, the packers, the sugar manu-*

---

[25] 62 Cong.Rec. 2051 (1922).

[26] 62 Cong.Rec. 2275 (1922).

[27] The amendment would have inserted the following language after "nut or fruit growers":

> and where any such agricultural product or products must be submitted to a manufacturing process, in order to convert it or them into a finished commodity, and the price paid by the manufacturer to the producer thereof is controlled by or dependent upon the price received by the manufacturer for the finished commodity by contract entered into before the production of such agricultural product or products, then any such manufacturers may.

62 Cong.Rec. 2273 (1922).

facturers, or anybody manufacturing anything where the raw product is produced on the farms can combine under this bill.

If the Senate wishes absolutely to defeat the bill, it ought to adopt this amendment; otherwise not.

Mr. PHIPPS. Mr. President, will the Senator yield?

Mr. KELLOGG. I yield.

Mr. PHIPPS. I desire to call attention to the fact that this amendment is limited to cases where the manufacturer enters into a contract with the producer before the produce has been grown.

Mr. KELLOGG. I can answer that. That is perfectly easy to do. *The packers could enter into contracts, the cotton mills could enter into contracts; and I hope the Senate will defeat the amendment.*[28]

Although we concede that there are differences between the contractual arrangement prevalent in the broiler industry and the arrangements that would have been covered by the Phipps Amendment, we are convinced that the nature of the opposition to that Amendment is instructive here as evidence that the Capper-Volstead Congress would not have considered NBMA integrators "farmers," but instead would have grouped them with the packers, the cotton mills, and the sugar refineries.

Congress's determination to circumscribe carefully the coverage of the Act is reflected in other parts of the legislative history as well. For example, the House Report stated:

> Section 1 defines and limits the kind of associations to which the legislation applies. These limitations are aimed

[28] 62 Cong.Rec. 2274 (1922) (emphasis added).

> to exclude from the benefits of this legislation all but actual farmers . . .[29].

Reading "farmers" in its ordinary sense as meaning those who own or operate farms focuses the benefits of the Act more closely on the persons central to Congress's concern and it keeps subject to the antitrust laws those companies that prepare farm products for market.

C. *The Fabric of Other Law*

The language and legislative history of Capper-Volstead support the government's position. NBMA contends, however, that the government's reading of "farmers" is at odds with the treatment of broiler integrators and similar entities under other statutes and regulations.[30] The contention is unavailing. First, broiler integrators and like companies have not fared nearly so well under other statutory schemes as the NBMA contention suggests.[31] Second, none of the other statutes or regulations

[29] H.R.Rep.No.24, 67th Cong., 1st Sess. 1 (1921). And see note 15 *supra*.

[30] Representative of the decisions cited by NBMA are *NLRB v. Strain Poultry Farms, Inc.*, 405 F.2d 1025 (5th Cir. 1969) (Fair Labor Standards Act); *United States v. Chemell*, 243 F.2d 944 (5th Cir. 1957) (Treasury Regulations); and *Agricultural Transport Ass'n v. United States*, 274 F.Supp. 528 (N.D.Tex.1967) (Interstate Commerce Act). NBMA also mentions a decision of the New Orleans Bank for Cooperatives to extend credit, Brief for NBMA at 47; a decision of the Secretary of Agriculture regarding a turkey marketing order, 27 Fed.Reg. 3326-54 (1962); a Cost of Living Council Decision, Brief for NBMA at 50; and a recent state court decision in Maine, *Maine Agricultural Marketing Ass'n v. Maplewood Poultry Co.*, Civ.No. 559 (Super.Ct.Me., Kennebec SS. 1971).

[31] In addition to the Fair Labor Standards Act decisions cited in the text, *infra, see, e.g., Parks v. Federal Crop Ins. Corp.*, 416 F. 2d 833 (7th Cir. 1969); *United States v. Elm Spring Farm, Inc.*, 38 F.Supp. 508 (D.Mass. 1941), *modified on other grounds*, 127 F.2d 920 (1st Cir. 1942).

mentioned by NBMA involves the important national commitment to free competition embodied in the antitrust laws.[32] We are wary of transplanting results from one statutory scheme to another, because policies may vary, and even where policies seem the same, different countervailing interests may affect the extent to which Congress intends to effectuate the policies.[33]

NBMA relies heavily on results under the Fair Labor Standards Act (FLSA)[34] and stresses particularly a panel decision of this court, *NLRB v. Strain Poultry Farms, Inc.*, 405 F.2d 1025 (5th Cir. 1969). In *Strain*, we held that a broiler integrator was a raiser of poultry within the meaning of the agricultural exemption in the FLSA.[35] The *Strain* decision is no longer good law. In *Bayside Enterprises, Inc. v. NLRB*, — U.S. —, 97 S.Ct. 576, 50 L.Ed.2d 494 (1977), the Supreme Court held that the National Labor Relations Board's position on the issue must be sustained. The NLRB squarely and consistently has held:

> when an employer contracts with independent growers for the care and feeding of the employer's chicks, the em-

[32] *See e. g., Case-Swayne Co. v. Sunkist Growers, Inc.*, 389 U.S. 384, 88 S.Ct. 528, 19 L.Ed.2d 621 (1967).

[33] *See United States v. Sisson*, 399 U.S. 267, 297-98, 90 S.Ct. 2117, 26 L.Ed.2d 608 (1970); *United States v. Stewart*, 311 U.S. 60, 69, 61 S.Ct. 102, 85 L.Ed. 40 (1940); *Lane v. Railroad Retirement Bd.*, 185 F.2d 819, 822 (6th Cir. 1950). In *FTC v. Bunte Bros.*, 312 U.S. 349, 61 S.Ct. 580, 85 L.Ed. 881 (1941), the Court stated:

> Translation of an implication drawn from the special aspects of one statute to a totally different statute is treacherous business. The Interstate Commerce Act and the Federal Trade Commission Act are widely disparate in their historic settings, in the enterprises which they affect, in the range of control they exercise, and in the relation of these controls to the functioning of the federal system.

Id. at 353, 61 S.Ct. at 582.

[34] 29 U.S.C. § 201 *et seq.*

[35] 29 U.S.C. § 203(f).

> ployer's status as a farmer engaged in raising poultry ends with respect to those chicks.

Imco Poultry, Division of International Multifoods Corp., 202 N.L.R.B. 259, 260 (1973). Thus, the government's interpretation of Capper-Volstead is consistent with the treatment accorded broiler integrators by the NLRB.

The Secretary of Labor long has held that employees of broiler integrators are not agricultural employees within the meaning of FLSA. A Labor Department regulation states:

> Feed dealers and processors sometimes enter into contractual arrangements with farmers under which the latter agree to raise to marketable size baby chicks supplied by the former who also undertake to furnish all the required feed and possibly additional items. Typically, the feed dealer or processor retains title to the chickens until they are sold. Under such an arrangement, the activities of the farmers and their employees are clearly within section 3(f). The activities of the feed dealer or processor, on the other hand, are not 'raising of poultry' and employees engaged in them cannot be considered agricultural employees on that ground.[36]

We note these results under the labor laws because they show at least that the government's position is no aberration. To be sure, integrators have had some success in pressing their claim to be farmers.[37] It is sufficient answer that we find nothing in these results under different schemes that compels an interpretation of Capper-Volstead that is contrary to the interpretation suggested by the language and legislative history of the Act. Blind obeisance to consistency is no virtue if it takes us from our pri-

[36] 29 C.F.R. § 780.126.

[37] *See* note 30 *supra*.

mary duty to work the will of the elected representatives of the people, and such obeisance would be strange indeed here, as there is no real consistency to obey.

III. CONCLUSION

NBMA's position that the Capper-Volstead Act should be brought up to date to take account of the complex structure of modern agriculture[38] rests on fundamental misconceptions of the Congressional purpose revealed in the language and legislative history of the Act and of the role of the judiciary in a democratic society.

The language and legislative history of Capper-Volstead make quite clear that Congress had no purpose to shelter from the laws of free competition the whole spectrum of agricultural enterprise. We may be certain that even in 1922 the agricultural economy had begun to evolve into the intricate thing it now is, yet Congress carefully limited the benefits of the Act to "farmers," and the legislative history reinforces our inclination to give the word its ordinary meaning.

[6] When a court takes account of changed reality in interpreting statutes, the goal remains effectuation of Congressional purpose, not alteration of it. If there are good reasons why broiler integrators should be protected against the general national policy of free competition, then NBMA should present those reasons to Congress.[39]

REVERSED

---

[38] Brief for NBMA at 26, 31.

[39] Legislation introducing a new system is at best empirical, and not infrequently administration reveals gaps or inadequacies of one sort or another that may call for amendatory legislation. But it is no warrant for extending a statute that experience may disclose that it should have been made more comprehensive.

Addision v. Holly Hill Fruit Products, Inc., 322 U.S. 607, 617, 64 S.Ct. 1215, 1221, 88 L.Ed. 1488 (1944).

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA, versus NATIONAL BROILER MARKETING ASSOCIATION	Civil Action No. 18173

ORDER

This is an action by the United States against the National Broiler Marketing Association (hereinafter referred to as the "NBMA") for an alleged violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. Jurisdiction is predicated on 15 U.S.C. § 4. Presently pending are the plaintiff's and defendant's motions for partial summary judgment focusing on the issue of whether NBMA is a cooperative association of agricultural producers exempt from the antitrust laws by virtue of Section 1 of the Capper-Volstead Act, 7 U.S.C. § 291, Section 6 of the Clayton Act, 15 U.S.C. § 17 and Section 5 of the Cooperative Marketing Act of 1926, 7 U.S.C. § 455.

The defendant is a non-profit cooperative association, chartered by the State of Georgia since September 15, 1970 under the provisions of the Georgia Cooperative Marketing Act, Ga. Code Ann. §§ 65-201 *et seq.* While NBMA was originally established with capital stock, its articles of incorporation were amended on December 6, 1973 to authorize the conversion of the association to a non-profit membership organization. It is comprised of members that integrate the five stages

of the production of ready-to-cook broilers, including (a) the placement and raising of breeder flocks for the production of eggs for hatching purposes, (b) the hatching of eggs and placement of chicks, (c) the growth of chicks for a period of seven to nine weeks (also referred to as the "grow-out" stage), (d) cooping and hauling of the grown chickens to processing facilities, and (e) the operation of plants to process the broilers for market. All of the member firms, though, do not directly engage in all of these functions. In fact, many conduct one or more of these operations through subsidiaries, affiliated companies, partnerships, joint ventures, or independent contractual arrangements. Usually the chicks are "grown out" through arrangements with independent contractors, known as growers, who provide facilities and certain services necessary for the care of the chickens during this period.

The government contends that this practice of contract growing deprives the NBMA, and its members, of the agricultural exemption under the antitrust laws. The defendant, on the other hand, maintains that despite the arrangements with independent growers, it is entitled to the protection of Section 6 of the Clayton Act, the Capper-Volstead Act and Section 5 of the Cooperative Marketing Act of 1926.

Section 6 of the Clayton Act, 15 U.S.C. § 17, provides that:

> The labor of a human being is not a commodity or article of commerce. Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws.

This statute was passed in 1914. Eight years later, Congress enacted the Capper-Volstead Act, 7 U.S.C. § 291, which "was intended to clarify the [Clayton Act's] exemption for agricultural organizations and to extend it to cooperatives having capital stock." *Case-Swayne Co., Inc. v. Sunkist Growers, Inc.*, 389 U.S. 384, 391 (1967). Therefore, the broad wording of Section 6 of the Clayton Act is limited by the language of the Capper-Volstead Act, and the latter is controlling in describing those entitled to the agricultural exclusion.

7 U.S.C. § 291 states:

> Persons engaged in the production of agricultural products as farmers, planters, ranchmen, dairymen, nut or fruit growers may act together in associations, corporate or otherwise, with or without capital stock, in collectively processing, preparing for market, handling, and marketing in interstate and foreign commerce, such products of persons so engaged. Such associations may have marketing agencies in common; and such associations and their members may make the necessary contracts and agreements to effect such purposes: *Provided, however,* That such associations are operated for the mutual benefit of the members thereof, as such producers, and conform to one or both of the following requirements:
>
> First. That no member of the association is allowed more than one vote because of the amount of stock or membership capital he may own therein, or,
>
> Second. That the association does not pay dividends on stock or membership capital in excess of 8 per centum per annum.

And in any case to the following:

> Third. That the association shall not deal in the products of non-members to an amount greater in value than such as are handled by it for members.

There is no dispute here that the NBMA is an association operated for the mutual benefit of its members, no member is allowed more than one vote because of the amount of stock or capital owned, and that the association does not pay dividends, stock or membership capital in excess of eight percent per annum. In addition, it is conceded that ready-to-cook broilers are agricultural products. The government and the defendant part company, though, over whether the members are engaged in the production of these products as farmers.[1]

The Capper-Volstead Act does not define the terms "engaged in production" or "farmers". Some assistance, although limited, is provided by the legislative history of this act. As the Supreme Court noted in *Case-Swayne Co., Inc. v. Sunkist Growers, Inc.*, *supra*, at 391:

> The reports on both H.R. 13931, the predecessor bill that failed of passage, and H.R. 2373, which became the Capper-Volstead Act, state:
>
> > Section 1 defines and limits the kind of associations to which the legislation applies. These limitations are aimed to exclude from the benefits of this legislation all but *actual farmers* and all associations not operated for the mutual help of their members *as such producers*." (Emphasis added.) H.R. Rep. No. 24, 67th Cong. 1st Sess. 1 (1921); H.R. Rep. No. 939, 66th Cong. 2d Sess. 1 (1920).

[1] The government also denies the NBMA's assertion that the association does "not deal in the products of non-members to an amount greater in value than such as are handled by it for members," as required by the Capper-Volstead Act. The government takes the position that the broilers are not products of the members. This is essentially a restatement of the main argument that the members are not "producers" of agricultural products.

However, the characteristics necessary to qualify as an actual "producer" or "farmer" cannot be adequately discerned from the legislative history.[2]

The government points to subsequent legislation, the Agricultural Fair Practices Act of 1968 (hereinafter referred to as the "Fair Practices Act"), 7 U.S.C. §§ 2301, *et seq.*, as reflecting a congressional design to grant Capper-Volstead immunity to broiler growers only. Portions of the legislative history, especially these excerpts from the Senate Report No. 474, 1968, U.S. Code Cong. & Adm. News, 1867-1874, do indicate that a company contracting with a grower should be considered as a "handler" of agricultural products within the meaning of the Fair Practices Act. However, these references do not demonstrate a clear intent to prevent a "handler" from also qualifying as one "engaged in the production of agricultural products" as a farmer within the meaning of the Capper-Volstead Act.

Even though the legislative background sheds little light on the problem here, guidance is sought from similar situations arising under other statutes. While numerous cases are cited by both parties, the most analogous is *N.L.R.B. v. Strain Poultry Farms, Inc.*, 405 F.2d 1025 (5th Cir. 1969). In that case, the United States Fifth Circuit Court of Appeals held that the employer, a poultry farm operator contracting with independent

[2] The government quotes from various congressional reports and debates but none of these excerpts articulate exactly who is and who is not a farmer. The debates do suggest that a manufacturer which purchased a product grown by a farmer was not intended to be covered by the Capper-Volstead Act since an amendment allowing such an exemption was defeated. See 62 Cong. Rec. 2227-2228, 2275. However, this source does not reveal the intent of Congress concerning those involved in various stages of production in addition to manufacturing or who already own the products and do not purchase from a farmer.

growers to raise chickens, was engaged in farming as the term is used in Section 3(f) of the Fair Labor Standards Act, 29 U.S.C. § 203(f), and that its truck drivers who hauled chickens to market were agricultural employees within the exemption of Section 2(3) of the National Labor Relations Act, 29 U.S.C. § 152(3). In reaching that conclusion, importance was attached to facts that the employer owned the chickens, supplied the feed and several follow-up services, retained the risk of loss throughout the entire process and assumed the hazard of market fluctuation which would affect the price of the birds.

The analysis of another case, *Wirtz v. Tyson's Poultry, Inc.*, 355 F.2d 255 (8th Cir. 1966), cited in *Strain*, is also persuasive. There, the court decided that a corporation engaged in the processing and marketing of eggs was within the agricultural exemption of the Fair Labor Standards Act, 29 U.S.C. § 213, despite the company's practice of procuring eggs from independent contract growers. Essential to this resolution was the finding that the employer was a farmer. *Id.* at 258. The court examined several factors similar to those emphasized in *Strain*, and observed that the employer owned both the chicks and the eggs, supplied the feed and medicine and accepted the risk of loss of the producing stock while the growers provided the premises, labor and equipment in raising the birds. Farming was the business of the corporate employer and its president since "but for their investment and other help, the independent growers would arguably never have raised the egg-producing birds themselves." *Id.* at 260.

While *Strain* and *Tyson's Poultry* do not involve an interpretation of the antitrust exemption, they do look to the total participation of the contractor to determine if that involvement is sufficient to warrant classifying him as a "farmer" or "producer." The task, then, is to examine the facts as they relate

to the ownership of the broilers, the services furnished during the "grow-out" stage and the risks associated with the raising of broilers.

Generally, the NBMA members own the chickens and retain title to them until grown. The government cites the contracts of three members, labelled M-27, M-46 and M-47, claiming that they either have no interest in the chickens or share ownership with the growers. However, M-27 is unique because it, too, is an agricultural co-operative and its members are also the growers. Hence, they and their association would be entitled to the agricultural exemption even under the government's test. The contract of M-46 stipulates that the member and the grower shall have joint title to the poultry but it also provides that upon the contractor's repayment of the loan extended by the Production Credit Association, the chickens become the sole property of the member company. The undisputed affidavit of Ronald W. Cameron, president of M-46, states that this contract provision is used simply for financing purposes. The grower is not required to pay the contractor for the one-half interest in the birds and the risk of loss is borne by the member and not the grower. The agreement between M-47 and its growers does specify that the chicks are sold to the grower, but according to the president of M-47, this is again merely a financing arrangement. The grower pays no cash to M-47 but instead signs a note payable to the contractor who then discounts it with recourse to a local bank or the local Production Credit Association. M-47 never called on a grower to pay a note and has never paid a grower less than the amount of the note.

There is no dispute that the growers furnish the land, buildings and equipment, water, electricity and labor for raising day-old chicks to marketable size and weight. On the other hand, the NBMA members provide the chicks, feed, medicines, vac-

cines and veterinary services. In addition, the members make all decisions with respect to the number and timing of chick placements, the diets and other growing conditions and the age and size at which the broilers shall be marketed. Thus, the division of services supplied by the contractor and grower in the "grow-out" period is very similar to *Strain* and *Tyson's Poultry*.

The members of NBMA also bear substantial risks associated with actual raising of the broilers. The government urges that certain contracts suggest that the grower must pay for broiler losses. These contractual provisions, though, apply in only limited circumstances, for example, where there is loss from theft (M-10), fire resulting from the grower's negligence (M-42) or the use of unauthorized pesticides (M-50). Moreover, the affidavit of Irston R. Barnes, an economic consultant, establishes that, in practice, the members and not the growers run the chance of loss from disease or natural disaster and most make payments to the growers if the flock is lost in transport.[3]

From the standpoint of total investment, the members of the NBMA have a significant stake in producing broilers. It is clear that approximately 90% of the live bird cost is attributable to the input supplied by the members. The government's approach to this investment participation is to emphasize the large contribution of the grower for land, buildings and equipment. Because the grower accepts some uncertainty in the venture does not disprove the substantial investment risks incurred by the members. Additionally, the average costs of the building and land and equipment is only a small part of the total

[3] Many members also pay for losses due to disease and weather. See Table G-2, Affidavit of Irston R. Barnes. The fact that some do not shoulder this burden does not mean that the grower takes the loss. Apparently, the grower in these cases does not receive any compensation for his services, but since the title is in the contractor, the member foregoes not only the potential profits but also must pay for the cost of the bird.

average costs of raising a broiler. See Stipulation, Table attached to Letter of George B. Rogers dated May 9, 1975.[4]

Finally, the member must take much of the risk of the market place. Feed, which accounts for over half of the total costs, is paid for by the contractor. The government points to numerous contracts with provisions tying the grower payments to the cost of feed. However, these agreements do not permit the contractor to pass all of the feed costs and the fluctuations in price on to the grower. Generally, the terms cited merely insert into a formula the costs of feed supplied to a grower. An

[4] This table covers the period of 1972-74 and itemizes the average costs of broiler production in the South and Northeast as follows:

Costs	Average [South] (cents per pound, salable live wt.)	Average [Northeast] (cents per pound, salable live wt.)
Grower:		
Fuel	0.14	0.09
Electricity	0.07	0.10
Litter	0.10	0.03
Hired Labor	0.15	0.19
Miscellaneous	0.19	0.02
Total variable	0.65	0.43
Depreciation	0.43	0.42
Interest	0.32	0.21
Insurance	0.08	0.08
Repairs, maintenance	0.11	0.15
Taxes	0.05	0.10
Total fixed	0.99	0.96
Total grower:	1.64	1.39
Contractor:		
Feed	16.65	16.25
Chicks	2.80	2.77
Grower payment	2.30	2.63
Medication, vaccination	0.24	0.34
Fuel	0.14	0.32
Litter	0.02	0.10
Other	0.32	0.11
Total contractor	22.47	22.52

[All footnotes omitted.]

average cost for all growers is then determined and payments are varied according to deviations from the average. The more efficient grower receives greater income for his efforts.

The member, not the grower, markets the broilers. Since the ready-to-cook broiler market is influenced by weekly price fluctuations, and sometimes subject to wide variation within a year, the members face significant risks in selling their chickens. The government argues, though, tha. payments to some growers vary with the market price. While this is correct, it proves only that the growers in these circumstances also take some chance of the market place, not that the members face no such risks. Secondly, the hazards for the growers are significantly decreased by minimum payment guarantees in the contracts with the member companies.

In light of these facts, the involvement of the members of the defendant association in the production of the broilers is sufficient to justify their classification as "[p]ersons engaged in the production of agricultural products as farmers . . ." within the meaning of the Capper-Volstead Act and to permit their claim to the antitrust exemption to the extent permitted by that statute.[3]

Accordingly, the defendant's motion for partial summary judgment is granted and the plaintiff's cross-motion for partial summary judgment is denied.

So ordered this the 26 day of August, 1975.

/s/ ALBERT J. HENDERSON, JR.
Judge, United States District
Court for the Northern
District of Georgia

---

[3] Due to the result reached here, it is not necessary to decide whether the NBMA and its members are also entitled to protection of the Co-operative Marketing Act of 1926.

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA,
Plaintiff,
v.
NATIONAL BROILER MARKETING ASSOCIATION,
Defendant.
Civil Action. No. 18173.

ORDER

This is an action for injunctive relief brought by the United States against the National Broiler Marketing Association (hereinafter referred to as "NBMA") for alleged violation of the antitrust laws. Jurisdiction is predicated on 15 U.S.C. § 4, and the amended complaint charges that NBMA has conspired with its members to fix, stabilize and maintain the prices of broiler chickens in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. NBMA has denied the Government's substantive allegations and has further defended by asserting claim to various statutory exemptions from the antitrust laws by virtue of its status as an agricultural cooperative.

In earlier proceedings in this case, plaintiff and defendant each filed motions for partial summary judgment which focused on the issue of whether NBMA is a cooperative association of agricultural producers exempt from the antitrust laws by virtue of Section 1 of the Capper-Volstead Act, 7 U.S.C. § 291, Sec-

tion 6 of the Clayton Act, 15 U.S.C. § 17, and Section 5 of the Cooperative Marketing Act of 1926, 7 U.S.C. § 455.

By Order dated August 26, 1975, this Court granted NBMA's motion for partial summary judgment, finding that the involvement of the members of the defendant Association in the production of broilers is sufficient to justify their classification as "[p]ersons engaged in the production of agricultural products as farmers . . ." within the meaning of the Capper-Volstead Act such as to permit their claim to the antitrust exemption to the extent permitted by that statute. That Order did not entirely dispose of this action because plaintiff contended that, even if defendant were an exempt cooperative, the scope of activities protected by the exemption was not as broad as the allegations of the Complaint.

On February 26, 1976, the Government amended its complaint to eliminate those allegations relating to activities which it contended were outside the scope of the exemption. The amended complaint now charges a violation of the Sherman Act by reason of activities all of which plaintiff concedes are within the protection afforded to qualified cooperatives of agricultural producers by the statutory exemptions. Plaintiff does not, of course, concede that defendant is qualified for the exemptions, and on this motion adheres to its earlier argument that defendant's members are not "producers" for purposes of the statutory exemptions because of their use of contract growers in raising broilers to marketable age.

Defendant has answered the amended complaint, and now moves for summary judgment, seeking dismissal of the action and a final judgment declaring defendant to be a duly organized cooperative of agricultural producers entitled to the various exemptions. The Government does not dispute that if NBMA is a qualified cooperative, the exemptions provide a complete defense to the allegations of the amended complaint and the action

must be dismissed. In the August 26, 1975 Order, the Court held that defendant qualifies for the exemption under the Capper-Volstead Act and Section 6 of the Clayton Act.[1] The Court adheres to that finding now. Thus, as a result of the amended pleadings, and in light of this Court's August 26, 1975 Order, the matter is now ripe for the entry of final judgment in defendant's favor.

In the stipulation entered into by the parties and filed in connection with the amended complaint on February 26, 1976, the parties agreed that the facts set forth in the "Government's Statement of Material Facts" filed June 6, 1975 and in defendant's "Statement of Material Facts Not in Dispute" filed June 20, 1975 are not disputed in these proceedings. Both of these statements incorporate references to the record sources underlying each statement of fact, and together they constitute the facts upon which the August 26 Order and the present Order are based. The Court hereby adopts these statements of the material facts, and finds that there is no genuine issue as to any of them.

On the basis of the undisputed facts, and for the reasons stated herein and in the previous Order granting defendant's motion for partial summary judgment, the Court concludes that defendant NBMA is entitled to the judgment it seeks as a matter of law.

Therefore it is Ordered, Adjudged and Decreed that

Defendant National Broiler Marketing Association is declared to be a duly organized cooperative association whose members are producers of agricultural products, entitled to act together in defendant Association pursuant to Section 1 of the Capper-

[1] That Order did not reach the question of whether NBMA and its members are also entitled to protection of the Cooperative Marketing Act of 1926.

Volstead Act, 7 U.S.C. § 291 and Section 6 of the Clayton Act, 15 U.S.C. § 17, and the activities of defendant and its members as alleged in the amended complaint are exempt from the anti-trust laws, specifically including Section 1 of the Sherman Act, by virtue of and in accordance with those statutes, and plaintiff's amended complaint is dismissed with prejudice.

Let judgment enter accordingly.

This 16 day of March, 1976.

/s/ ALBERT J. HENDERSON, JR.
ALBERT J. HENDERSON, JR., Judge,
United States District Court for the
Northern District of Georgia

APPENDIX D

United States Court of Appeals
For the Fifth Circuit

No. 76-2115

D. C. Docket No. CA18173

UNITED STATES OF AMERICA,
Plaintiff-Appellant,

versus

NATIONAL BROILER ASSOCIATION,
Defendant-Appellee.

Appeal from the United States District Court for the
NORTHERN DISTRICT OF GEORGIA

Before MORGAN and HILL, Circuit Judges, and NOEL,* District Judge.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Georgia, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, reversed;

It is further ordered that defendant-appellee pay to plaintiff-appellant, the costs on appeal to be taxed by the Clerk of this Court.

April 22, 1977

Issued as Mandate:

APPENDIX E

INTEGRATED CATTLE MARKETING

A BETTER WAY

UNITED STATES DEPARTMENT OF AGRICULTURE
FARMER COOPERATIVE SERVICE
FCS INFORMATION 107

INTEGRATED CATTLE MARKETING

A Better Way

Clement E. Ward
Agricultural Economist

Does it concern you that only one or two prospective buyers bid on your cattle?

Does competitive pricing mean more to you than just one or two bids?

Do you wish you had access to more and better market and price information?

Do you believe your profitability could be improved if you integrated into feeder cattle growing, cattle feeding, meat packing, or marketing beef through producer-owned retail stores?

Have you found the costs of purchasing land, buildings, and equipment for integration to be prohibitively high?

If you answered yes to any of the above questions, the information here will interest you. You will learn how you and other cattlemen, through a producer owned and controlled cooperative, might: (1) integrate forward without investing in expensive land, facilities, and equipment, and yet enable you to retain your decision-making independence and flexibility; (2) attract more cattle buyers for your cattle and increase price competition; and (3) improve your access to additional market and price information.

What a Cooperative Can Do for You

A producer-owned cooperative provides the organizational structure to accomplish two objectives: (1) pool the necessary

resources to integrate into feeder cattle growing, cattle feeding, meat packing, and meat retailing; and (2) effectively market cattle and beef for its member-owners. The cooperative is controlled by its members who elect a board of directors to represent them in establishing policies and in supervising the cooperative's hired management.

What Contract Integration Offers

Contract integration allows you or your cooperative to shift to others the risks associated with investments in expensive land, facilities, and equipment required in an integrated marketing operation. You retain ownership and control of your cattle through the cooperative, but you contract with individuals or firms for certain services on a custom or fee basis. These services include growing, feeding, and even meat packing.

Other individuals or firms are willing to perform these services for you because they are specialists. They can operate on a larger scale that brings efficiencies not attainable by you or your cooperative on a smaller scale.

And you share any profits resulting from owning cattle further in the production-marketing channel.

You Have Flexibility and Options

Contract integration allows you to decide whether, when, and how far to integrate forward. With this integrated marketing opportunity, you have considerable flexibility and several options. You can choose any combination of functions to do yourself or have your cooperative contract to have others perform them.

For example, you can produce and market light feeder cattle and calves (400 to 600 pounds) through your cooperative, indicated by A in the diagram, page 4. Or you can have your cooperative contract for one, two, or all three of the next functions indicated by B, C, and D. You can have your cooperative contract for feeder cattle growing (B) and then sell your heavy feeder cattle (600 to 800 pounds) to a cattle feeder (the next marketing stage). Or you can tell your cooperative to contract further for cattle feeding (C) and market your slaughter cattle to a meat packer (the next marketing stage). Your fourth option would be to have your cooperative contract for slaughtering, buy the carcasses, and market them to a further processor (the next marketing stage).

You can bring your cooperative into play at any one or all of the contracting options—B, C, or D. Whether you decide to market light feeder cattle, heavy feeder cattle, or slaughter cattle, your cooperative markets them for you. But you decide when to market and how much integration services you want. You own the cattle throughout the integration process, until the cattle are marketed or until your cooperative purchases beef carcasses.

All beef carcasses from custom slaughtering members' cattle are purchased by the cooperative. Price is based on the carcass beef price at a predetermined time and place, plus or minus premiums and discounts for quality variations from the base price. You receive as accurately as possible what your carcasses are worth, rather than receiving the same price for all carcasses regardless of differences in quality.

Your Cooperative's Responsibilities and Options

Your cooperative coordinates all contract integration activities. It identifies and selects feeder cattle growers, cattle feeders, and meat packers who will grow, feed, and slaughter cattle, respectively, on a custom or fee basis. You appoint the cooperative as your sole and exclusive agent to negotiate custom contracts and the cooperative handles negotiations for you.

Your cooperative weighs your preferences against the preferences of custom or contract operators (growers, feeders, and meat packers). It is responsible for comparing costs among custom operators and between producers and custom operators. It ensures you are attempting to meet the needs of custom operators (for example, trying to deliver large, uniform, and healthy lots of cattle at the proper time and place), yet maintains your control of the integration process.

Your cooperative, in conjunction with your preferences and needs and those of custom operators, establishes guidelines for growing, feeding, and slaughtering cattle. That includes guidelines for you when delivering cattle and recordkeeping requirements of custom operators. It negotiates the services custom operators provide and the costs or charges for each service.

As important as negotiating the initial contract, your cooperative monitors contracts to ensure all parties are complying with contract provisions. Your cooperative monitors contracts in force and oversees the entire integration process. It then is in a

good position to evaluate contract provisions and custom operators, and to make necessary adjustments in subsequent integration activities.

In addition to responsibilities regarding contract integration through growing, feeding, and slaughtering; your cooperative has some independent integration and marketing options. The board of directors and management decide on any further processing of beef carcasses and the method of marketing beef. If your cooperative decides to further process beef, it will contract to have carcasses processed to cooperative specifications on a custom or fee basis.

Further processing expands the type of customers your cooperative can serve. It may have carcasses divided into wholesale cuts, retail cuts, fabricated into other products, or have some meats cured or smoked, among other options.

Whatever beef products are produced, your cooperative has the option of marketing beef itself or having others market it. Food brokers and (probably) meat packers would market cooperative beef on a commission basis. However, your cooperative may choose to market beef directly to consumers or to wholesale or retail distributors.

How Cattle Are Marketed

Your cooperative markets all your cattle regardless of whether you decide to integrate forward. You and your cooperative formalize the commitment to market all cattle through your cooperative by signing a marketing agreement. Marketing agreements enable your cooperative to create larger, more efficient markets that attract more buyers.

Buyer Competition Increases

Large numbers of cattle are required to operate regularly scheduled and economical markets that attract many buyers. A marketing method that can serve cattlemen in a wide geographic area, attract many buyers, yet be a relatively low-cost operation is a telephone auction.

Telephone auctions, commonly referred to as teleauctions, are conducted over a conference telephone call (several buyers listen on the same line). Teleauctions expand the market area by allowing buyers from a wide geographic area to bid on cattle without having to be present at the auction site. They are as close to the auction as their telephones. Buyers either receive a written description of cattle to be auctioned prior to the auction or an oral description over the telephone just before each lot is auctioned. They decide what price they will pay for a sale lot of cattle and bid over the telephone. Buyers save travel time and expenses, and because teleauctions can sell a large number of cattle in a shorter time than conventional auctions, buyers save buying time also.

Teleauctions expand the market area on the selling side because cattle can be auctioned from several assembly points or directly from several farms or ranches at a single auction. You may transport your cattle just as far as if they were sold at a local auction, but you market them at a larger-volume auction. If possible, your cattle are sold while they remain on farms or ranches and are transported directly to buyers after the auction. That enables buyers to purchase a large supply of cattle in a short period of time at a single auction but have them delivered over a period of time. Delivery may be spread over a 7- to 10-day period after the auction.

Because teleauctions market cattle on a description basis rather than by visual inspection, your cooperative must use a

clearly understood and consistent set of criteria to describe cattle. Teleauction marketing, with many participating buyers, can mean increased price competition compared to receiving only one or two bids for cattle. Competitive pricing and description marketing combined can more accurately transmit buyer preferences for cattle from buyers back to sellers through market prices. You more nearly receive what your cattle are worth and can more accurately determine buyer preferences for cattle.

Price Information Improves

Your cooperative can provide a valuable service for you by supplementing readily available market and price information with information generated by you and other members, custom operators (growers, feeders, and meat packers), and cattle buyers. Your cooperative assembles the data, analyzes and interprets it, and distributes results to you.

Price information, as you know, is extremely important. The U.S. Department of Agriculture, State universities, and numerous trade publications provide you with market and price outlook information. Your cooperative can supplement that by analyzing prices paid at its teleauctions. Because cattle are marketed on a description basis, you can learn the difference a given trait makes in terms of prices paid by buyers. For example, the difference between a 600-pound, choice grade, Hereford steer versus a 600-pound, choice grade, Hereford-Angus steer. Thus, you can learn the price differences for variations in weight, sex, grade, condition, breed, and other descriptive traits.

Through your cooperative's contract integration programs, you receive information on the performance of your cattle through the growing and feeding stages and the performance of cattle "on the rail." Your cooperative ensures cattle-to-owner

identity is maintained (using eartags or brands) and that performance records are kept to return performance information to you. Performance information, combined with auction results, can aid you in making intelligent production and marketing decisions.

Data you and other members provide (for example, cattle inventory, estimated increase or decrease in cattle numbers, and expected marketings throughout the year) aid your cooperative in planning the marketing and merchandising of your cattle.

Want More Information?

Detailed information on the organization and operation of this integrated marketing system can be found in "A Contract Integrated, Cooperative Cattle Marketing System," Marketing Research Report 1078. The report details a mutual marketing commitment by you and your cooperative. It explains the operation of each of your integration options (feeder cattle growing, cattle finishing, and cattle slaughtering) and the integration option of your cooperative (beef processing and marketing). The report also discusses operation of the cattle marketing program (both the teleauction exchange system and information system).

For copies of the report, write: Farmer Cooperative Service, U.S. Department of Agriculture, 500 12th Street, SW, Washington, D.C. 20250.

FCS Information 107 May 1977

Farmer Cooperative Service
U.S. Department of Agriculture

Farmer Cooperative Service provides research, management, and educational assistance to cooperatives to strengthen the economic position of farmers and other rural residents. It works directly with cooperative leaders and Federal and State agencies to improve organization, leadership, and operation of cooperatives and to give guidance to further development.

The Service (1) helps farmers and other rural residents obtain supplies and services at lower cost and to get better prices for products they sell; (2) advises rural residents on developing existing resources through cooperative action to enhance rural living; (3) helps cooperatives improve services and operating efficiency; (4) informs members, directors, employees, and the public on how cooperatives work and benefit their members and their communities; and (5) encourages international cooperative programs.

The Service publishes research and educational materials and issues *Farmer Cooperatives*. All programs and activities are conducted on a nondiscriminatory basis, without regard to race, creed, color, sex, or national origin.